

#### 15.403-4

addition, the contracting officer should request data to determine the cost realism of competing offers or to evaluate competing approaches.

(c) *Commercial items.* (1) At a minimum, the contracting officer must use price analysis to determine whether the price is fair and reasonable whenever the contracting officer acquires a commercial item (see 15.404-1(b)). The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable. If the contracting officer cannot determine whether an offered price is fair and reasonable, even after obtaining additional data from sources other than the offeror, then the contracting officer shall require the offeror to submit data other than certified cost or pricing data to support further analysis (see 15.404-1). This data may include history of sales to non-governmental and governmental entities, cost data, or any other information the contracting officer requires to determine the price is fair and reasonable. Unless an exception under 15.403-1(b)(1) or (2) applies, the contracting officer shall require that the data submitted by the offeror include, at a minimum, appropriate data on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price.

(2) *Limitations relating to commercial items (10 U.S.C. 2306a(d)(2) and 41 U.S.C. 3505(b)).* (i) The contracting officer shall limit requests for sales data relating to commercial items to data for the same or similar items during a relevant time period.

(ii) The contracting officer shall, to the maximum extent practicable, limit the scope of the request for data relating to commercial items to include only data that are in the form regularly maintained by the offeror as part of its commercial operations.

(iii) The Government shall not disclose outside the Government data obtained relating to commercial items that is exempt from disclosure under 24.202(a) or the Freedom of Information Act (5 U.S.C. 552(b)).

(3) For services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold

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competitively in substantial quantities in the commercial marketplace, see 15.403-1(c)(3)(ii).

[75 FR 53143, Aug. 30, 2010, as amended at 79 FR 24201, Apr. 29, 2014]

#### 15.403-4 Requiring certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

(a)(1) The contracting officer shall obtain certified cost or pricing data only if the contracting officer concludes that none of the exceptions in 15.403-1(b) applies. However, if the contracting officer has reason to believe exceptional circumstances exist and has sufficient data available to determine a fair and reasonable price, then the contracting officer should consider requesting a waiver under the exception at 15.403-1(b)(4). The threshold for obtaining certified cost or pricing data is \$750,000 for prime contracts awarded before July 1, 2018, and \$2 million for prime contracts awarded on or after July 1, 2018. When a clause refers to this threshold, and if the threshold is adjusted for inflation pursuant to 1.109(a), then pursuant to 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment. Unless an exception applies, certified cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, in the case of existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to furnish certified cost or pricing data (but see waivers at 15.403-1(c)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not certified cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts must consider both increases and decreases (*e.g.*, a \$500,000 modification resulting from a reduction of \$1,500,000 and an increase of \$1,000,000 is a \$2,500,000 pricing adjustment exceeding

the \$2,000,000 threshold). This requirement does not apply when unrelated and separately priced changes for which certified cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring certified cost or pricing data if—

(A) The total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection; or

(B) The partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see 49.105(c)(15)).

(2) Unless prohibited because an exception at 15.403-1(b) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain certified cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection, provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for certified cost or pricing data. The documentation shall include a written finding that certified cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(3) Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract, without requiring consideration, to reflect a \$2 million threshold for obtaining certified cost or pricing data on subcontracts entered on and after July 1, 2018. See 15.408.

(b) When certified cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcon-

tractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The certified cost or pricing data and data other than certified cost or pricing data required by the contracting officer to determine that the price is fair and reasonable.

(2) A Certificate of Current Cost or Pricing Data, in the format specified in 15.406-2, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

(c) If certified cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data must not be considered certified cost or pricing data as defined in 2.101 and must not be certified in accordance with 15.406-2.

(d) The requirements of this subsection also apply to contracts entered into by an agency on behalf of a foreign government.

[62 FR 51230, Sept. 30, 1997, as amended at 65 FR 60553, Oct. 11, 2000; 66 FR 2129, Jan. 10, 2001; 71 FR 57367, Sept. 28, 2006; 75 FR 53133, 53144, Aug. 30, 2010; 80 FR 38297, July 2, 2015; 85 FR 27090, May 6, 2020; 85 FR 40073, July 2, 2020]

**15.403-5 Instructions for submission of certified cost or pricing data and data other than certified cost or pricing data.**

(a) Taking into consideration the policy at 15.402, the contracting officer shall specify in the solicitation (see 15.408 (1) and (m))—

(1) Whether certified cost or pricing data are required;

(2) That, in lieu of submitting certified cost or pricing data, the offeror may submit a request for exception from the requirement to submit certified cost or pricing data;

(3) Any requirement for data other than certified cost or pricing data; and

(4) The requirement for necessary preaward or postaward access to offeror's records.

(b)(1) *Format for submission of certified cost or pricing data.* When certification is required, the contracting officer may require submission of certified cost or